

1 HONORABLE EDWARD F. SHEA
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1 THE SCOTT LAW GROUP, P.S.
2 Darrell W. Scott, darrellscott@mac.com
3 Matthew J. Zuchetto, matthewzuchetto@mac.com
4 926 West Sprague Avenue, Suite 680
5 Spokane, WA 99201
5 Ph: (509) 455-3966

6 TERRELL MARSHALL DAUDT & WILLIE PLLC

7 Beth E. Terrell, bterrell@tmdwlaw.com
8 Toby J. Marshall, tmarshall@tmdwlaw.com
9 Jennifer Rust Murray, jmurray@tmdwlaw.com
9 936 North 34th Street, Suite 400
10 Seattle, WA 98103
10 Ph: (206) 816-6603

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON

13 SHANNON BRONZICH and)
14 CATHLEEN FARRIS, individually and on)
15 behalf of a Class of similarly situated) NO. CV-10-364-EFS
16 Washington residents,)
16 Plaintiffs,) PUTATIVE CLASS ACTION
17 v.)
17) JOINT STATUS CERTIFICATE
18 PERSELS & ASSOCIATES, LLC, et al.,) AND DISCOVERY PLAN
19)
20 Defendants.)
20

21
22 The parties, through their attorneys of record, conferred in a Rule 26(f)
23 conference on Friday, July 15, 2011 and again on Wednesday, July 20, 2011 and
24 on Monday, July 25, 2011, and now submit this Joint Certificate and Discovery
25
26

JOINT STATUS CERTIFICATE AND
DISCOVERY PLAN: 1

LAW OFFICES
THE SCOTT LAW GROUP
A PROFESSIONAL SERVICE CORPORATION
926 W. SPRAGUE AVENUE
SUITE 680
SPOKANE, WA 99201
(509) 455-3966

1 Plan in advance of the Status Conference set for August 9, 2011 at 9:50 a.m. as
2 follows:
3

4 **A. Whether the parties have notified the Clerk's Office if they consent to
5 the case being heard by a full-time U.S. Magistrate Judge, see 28 U.S.C.
6 § 636:**

7 On April 27, 2011, Defendants Ascend One Corporation ("Ascend One"),
8 CareOne Services, Inc. ("CareOne") and Amerix Corporation ("Amerix")
9 (collectively, "CareOne Defendants") filed their report indicating that they do not
10 consent to a Magistrate Judge. On May 3, 2011, Defendants Persels & Associates,
11 Neil Ruther and Jimmy Persels (collectively, "the Persels Defendants") filed their
12 report indicating that they do not consent to a Magistrate Judge. On May 2, 2011,
13 Plaintiffs submitted a form stating that they do not consent to a Magistrate Judge.
14

15 **B. Whether jurisdiction and venue exist and, if they do exist, the basis for
16 each:**

17 Subject matter jurisdiction and venue are not in dispute. This Court has
18 subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d)(2)
19 because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive
20 of interest and is a class action composed of more than 100 members and in which
21 at least one member of the Class is a citizen of a state different from that of a
22 Defendant. Venue is proper pursuant to 28 USC § 1391(b)(2) in that the events that
23 gave rise to claims occurred in substantial part in this federal district.
24

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JOINT STATUS CERTIFICATE AND
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A PROFESSIONAL SERVICE CORPORATION
926 W. SPRAGUE AVENUE
SUITE 680
SPOKANE, WA 99201
(509) 455-3966

1 Defendants Neil Ruther and Jimmy Persels moved to dismiss based on lack
 2 of personal jurisdiction. The Court denied Defendants' motion in its Order dated
 3 May 27, 2011.
 4

5 Defendants Ascend One, Neil Ruther and Jimmy Persels have each raised
 6 the affirmative defense of lack of personal jurisdiction in their respective answers
 7 to the amended complaint.
 8

9 **C. Whether service of process is complete and, if not, a deadline for
 10 completion:**

11 Service has been effectuated as to all named parties. The identities of the
 12 John Doe and Jane Doe Defendants are not presently known to Plaintiffs, and
 13 Plaintiffs anticipate the joinder of additional named defendants prior to a hearing
 14 on class certification.
 15

16 **D. A brief description of the claims and defenses:**
 17

18 Plaintiffs allege Defendants are debt adjusters under Washington law and
 19 that the fees Defendants have charged Washington consumers violate
 20 Washington's Debt Adjusting Act ("DAA"), which gives rise to *per se* violation of
 21 Washington's Consumer Protection Act ("CPA"). Plaintiffs also separately allege
 22 that Defendants committed unfair or deceptive acts or practices in violation of the
 23 CPA and that they breached their fiduciary duties to Plaintiffs and the Class.
 24

1 Further, Plaintiffs allege Defendants are liable for aiding and abetting violations of
2 the DAA.

3 Defendants deny Plaintiffs' allegations and in response, have asserted the
4 following defenses: (1) the claims asserted by Plaintiffs and alleged putative class
5 members fail, in whole or in part, to state a claim upon which relief may be
6 granted; (2) the claims asserted by Plaintiffs and alleged putative class members
7 are barred, in whole or in part, by ratification; (3) the claims asserted by Plaintiffs
8 and alleged putative class members are barred, in whole or in part, by
9 acquiescence; (4) the claims asserted by Plaintiffs and alleged putative class
10 members are barred, in whole or in part, by the voluntary payment doctrine and by
11 the doctrine of accord and satisfaction; (5) the aiding and abetting claim asserted
12 by Plaintiffs and alleged putative class members fails to state a justiciable claim;
13 (6) any alleged damages were the result of acts or omissions on the part of
14 Plaintiffs themselves or third parties, for which acts or omissions Defendants are
15 not responsible; (7) Plaintiffs' and the putative class members' claims are barred,
16 in whole or in part, by the Fifth and Fourteenth Amendments to the United States
17 Constitution and the analogous provisions of the Constitution of Washington; and
18 (8) Defendants are exempt from application of Washington's Debt Adjusting
19 Statute.

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926 W. SPRAGUE AVENUE
SUITE 680
SPOKANE, WA 99201
(509) 455-3966

1 Persels Defendants have asserted the following additional defenses: (1) the
 2 claims asserted by Plaintiffs and alleged putative class members are barred, in
 3 whole or in part, by the applicable statute of limitations; (2) the claims asserted by
 4 Plaintiffs and alleged putative class members are barred, in whole or in part, by the
 5 doctrine of laches; (3) the claims asserted by Plaintiffs and alleged putative class
 6 members are barred, in whole or in part, by the doctrines of waiver and estoppel;
 7 (4) the relief sought by Plaintiffs and alleged putative class members is barred by
 8 the provisions of the relevant retainer agreements for legal services in connection
 9 with debt-related issues with Persels & Associates, LLC; (5) the claims of
 10 Plaintiffs and alleged putative class members are barred by the accord and
 11 satisfaction doctrine; (6) the claims of Plaintiffs and alleged putative class
 12 members are barred by settlement and release.

17 **E. Whether a statute's constitutionality is being challenged, *see LR 24.1*
 18 (Fed. R. Civ. P. 5.1):**

19 Defendants argued that the Debt Adjusting Act ("DAA"), RCW 18.28.010 *et*
 20 *seq.*, violated the separation of powers doctrine in their motion to dismiss. The
 21 Court rejected Defendants' argument.

23 In separate pending motions, Persels Defendants and CareOne Defendants
 24 address issues as to whether the statutory construction of Washington's Debt
 25 Adjustment Act, RCW ch. 12.28, as set forth in the Court's May 27 Order (ECF
 26

JOINT STATUS CERTIFICATE AND
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 SUITE 680
 SPOKANE, WA 99201
 (509) 455-3966

1 No. 98) renders the DAA unconstitutional under principles of due process, equal
2 protection, and separation of powers. Persels Defendants have requested
3 reconsideration of the Court's order or, alternatively, certification of the questions
4 to the Ninth Circuit Court of Appeals. The CareOne Defendants have requested
5 certification of the questions to the Ninth Circuit Court of Appeals. Defendants
6 take the position that the Debt Adjustment Act is constitutional if construed to
7 provide that attorneys are exempted from the Act so long as their activities related
8 to consumer debt are related to or in connection with ("solely incidental") their
9 practice of law.

13 **F. Any issues that should be certified to a state supreme court:**

14 Plaintiffs believe that in light of the Washington Supreme Court decision in
15 *Carlsen v. Global Client Solutions*, 171 Wn.2d 486, 2011 Wash. LEXIS 368
16 (Wash. May 12, 2011), no further issues should be certified to the state supreme
17 court.

18 Defendants do not believe that any issues should be certified to the state
19 supreme court and do not agree with Plaintiffs' reading of *Carlsen*. Persels
20 Defendants have requested reconsideration of the Court's order of May 27, 2011
21 (ECF No. 98) or, alternatively, certification of an interlocutory appeal to the Ninth
22 Circuit on the Court's ruling denying Defendants' motions to dismiss. The
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JOINT STATUS CERTIFICATE AND
DISCOVERY PLAN: 6

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THE SCOTT LAW GROUP
A PROFESSIONAL SERVICE CORPORATION
926 W. SPRAGUE AVENUE
SUITE 680
SPOKANE, WA 99201
(509) 455-3966

1 CareOne Defendants have sought certification of an interlocutory appeal to the
2 Ninth Circuit.
3

4 **G. Suggested deadline for amending the pleadings:**

5 The parties propose that all motions to amend the pleadings be filed no later
6 than April 13, 2012.
7

8 **H. Suggested deadline for adding additional parties.**

9 The parties propose that the deadline for adding additional parties should be
10 April 13, 2012.
11

12 **I. Whether a non-government corporate party filed the necessary
13 ownership statement, *see Fed. R. Civ. P. 7.1.***

14 Rule 7.1 Corporate Disclosure Statements have been filed by Defendants
15 CareOne [ECF No. 6]; Ascend One [ECF No. 7]; Amerix [ECF No. 124], and
16 Persels & Associates, LLC [ECF No. 10]. Accordingly, the parties have complied
17 with this rule.
18

19 **J. Whether the case involves a minor or incompetent party and whether
20 the appointment of a guardian ad litem is necessary, *see LR 17.1.***

21 Not applicable.
22

23 **K. Discovery.**

24 **a. Suggested deadline for initial disclosures, *see Fed. R. Civ. Proc.*
25 *26(a)(1).***

26 The parties' initial disclosures under Rule 26(a)(1) will be made by August

15, 2011.

2 **b. Subjects on which discovery may be needed.**

3 Plaintiffs' discovery will be needed on the following subjects: Defendants'
4 activities, policies, procedures, practices, contracts, communications and protocols
5 regarding debt adjusting and related services; Defendants' business structure; and
6 the nature of any relationships between Defendants and other entities regarding
7 debt adjusting. Plaintiffs anticipate deposing Defendants Ruther and Persels,
8 Bernaldo Dancel, Leza Griffith, William Grafton, Lisa Perillo, Mike Croxson, John
9 Mill and other officers and individuals involved in the management of Defendants'
10 debt settlement businesses, attorneys affiliated with Defendants' debt settlement
11 businesses and other individuals with knowledge about Defendants' practices,
12 policies and procedures regarding debt settlement businesses, as well as
13 Defendants' experts.

14 Defendants anticipate noting the depositions of *inter alia* plaintiffs,
15 plaintiffs' creditors, collection agents for creditors, family members, other
16 attorneys who have represented plaintiffs, and plaintiffs' experts. Defendants may
17 seek to obtain records from each of these entities and individuals. Defendants'
18 discovery will focus on the following subjects: each Plaintiff's relationship and
19 experience with Defendants; the services provided to each Plaintiff, each Plaintiff's
20

1 damage claim, and the suitability of each Plaintiff to serve as a representative of
2 the putative class.

3 Discovery by the parties will, in addition, include any other subjects
4 determined to be relevant or that could lead to relevant information during the
5 course of discovery. All parties anticipate that they may request a protective order
6 to limit or prevent certain discovery for numerous reasons including, but not
7 limited to, concerns of improper invasion of privacy, harassment, intimidation, and
8 seeking unnecessary, irrelevant information from the parties' family members and
9 attorneys in unrelated matters.

10 **c. Any issues about preserving discoverable information.**

11 The parties agree to preserve discoverable information and do not foresee
12 any issues in this area.

13 Plaintiffs have requested CareOne to preserve a sample of recordings of
14 telephone conversations with former and/or current clients of Persels & Associates.
15 These recordings are purged from CareOne's computer system in the ordinary
16 course of business. CareOne is investigating the ability to satisfy Plaintiffs'
17 request. Plaintiffs do not waive the right to seek sanctions for the spoliation of
18 evidence that has been or will be purged from any of Defendants' systems after the
19 commencement of litigation. Defendants consider any suggestion of spoliation to
20

1 be without merit and will oppose any effort by Plaintiffs to seek sanctions or other
2 relief.

3

4 **d. Claims of privilege or protection.**

5 **Plaintiffs' Position.** Plaintiffs anticipate that they may request a protective
6 order to limit or prevent certain discovery due to concerns of improper invasion of
7 privacy, harassment, intimidation, and seeking to obtain unnecessary, irrelevant
8 information from Plaintiffs' family members and attorneys in unrelated matters.

9 Defendants raised the concern regarding discovery of information that may
10 contain attorney/client privileged information with putative class members.
11 Plaintiffs have agreed to attempt to draft discovery requests to largely avoid the
12 issue. In the event Plaintiffs request material that Defendants consider privileged,
13 Defendants should produce a detailed privilege log so that Plaintiffs' counsel and,
14 if necessary, the Court may assess the propriety of any asserted privilege. Until the
15 Defendants identify specific information or material which would qualify as work
16 product or fall within the attorney/client privilege, and the specific underlying
17 bases for the asserted protection or privilege, Plaintiffs are not able to properly
18 evaluate any asserted protection or privilege.
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JOINT STATUS CERTIFICATE AND
DISCOVERY PLAN: 10

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THE SCOTT LAW GROUP
A PROFESSIONAL SERVICE CORPORATION
926 W. SPRAGUE AVENUE
SUITE 680
SPOKANE, WA 99201
(509) 455-3906

1 **Persels Defendants' Position:** Plaintiffs' lawsuit presents significant
2 attorney-client privilege and work product issues that should be addressed early
3 in the discovery process.
4

5 Plaintiffs Bronzich and Farris waived their respective attorney-client
6 privileges and work product protections by commencing this action. However,
7 the more than 2,000 Washington residents whom Ms. Bronzich and Ms. Farris
8 seek to represent as putative class members are current and former clients of
9 Persels law firm. Each putative-class-member-client retained Persels &
10 Associates to act as their lawyers to counsel them in certain regards as to their
11 consumer debt. Each such putative-class-member-client individually possesses
12 an attorney-client privilege arising from their relationship with Persels &
13 Associates. Much of the legal work provided to the client also is protected as
14 work product, undertaken in response to actual or threatened litigation by
15 creditors to collect on consumer debt.
16

17 No putative-class-member-client has consented to waive their privilege and
18 protections protecting their confidential information and work product from
19 disclosure. No client has consented to become a litigation claimant against their
20 lawyers. No client has consented to have their financial problems (and the
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JOINT STATUS CERTIFICATE AND
DISCOVERY PLAN: 11

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SUITE 680
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(509) 455-3966

1 reasons for those problems) vetted publicly before a federal court in this
2 proceeding.

3 Nevertheless, in order for Persels Defendants to respond to Plaintiffs'
4 allegation that the Persels firm's relationship with CareOne is merely a "sham" to
5 circumvent the Debt Adjustment Act (and to respond to other Plaintiff
6 allegations), defense counsel needs to access putative-class-members' protected
7 information and files that include Persels attorneys' confidential communications
8 with individual putative class members formulating client legal defenses and
9 strategic options for responding to creditor demands and litigation claims, Persels
10 & Associates' preparation of pleadings, assessment of client options under
11 bankruptcy laws, client rights under the Fair Debt Collection Practices Act, and
12 settlement of creditors claims. This type of protected and privileged information
13 also is probative of several Rule 23 class-certification issues.

14 Additionally, Persels Defendants also require a court order authorizing the
15 Firm and its lawyers to continue their daily communication with their clients,
16 including the ability of Washington field attorneys to respond to any client
17 inquiry about the allegations asserted by Ms. Bronzich and Ms. Farris. RPC 1.4
18 (Communication); GR 24(a)(Definition of the Practice of Law). Persels &
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JOINT STATUS CERTIFICATE AND
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SUITE 680
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(509) 455-3966

1 Associates today represents more than 1,000 existing clients in Washington, each
2 of whom has pressing legal demands by creditors.

3 Persels Defendants propose to address these issues in a motion to be filed
4 by August 16, 2011, one week after the Rule 16 conference. Plaintiffs have
5 agreed to respond to the motion by September 9, 2011, with Defendants' reply
6 due on September 19, 2011.

7

8 **e. Proposed modifications to the standard discovery procedures,
including bifurcation and/or consolidation of discovery.**

9

10 **Plaintiffs' Position.** Plaintiffs do not presently anticipate necessary
11 modifications to the standard discovery procedures.

12

13 As noted above, until the Defendants identify specific information or
14 material which would qualify as work product or fall within the attorney/client
15 privilege, and the underlying bases for the asserted protection or privilege,
16 Plaintiffs are not able to properly evaluate any asserted privilege or protection. In
17 the event Defendants are able to articulate actual and specific concerns,
18 appropriate measures, including but not limited to the production of a privilege
19 log, may be utilized to ensure that any real privilege or protection is properly
20 protected.

Defendants’ Position. Persels Defendants intend to file a motion by not later than August 16, 2011 addressing privilege and work product issues. Such issues include but are not limited to the proper scope of discovery, whether it is appropriate to consider class certification given the unique factual context of this proceeding, and permissible communications with putative class members who are currently clients of the Persels Defendants.

f. Suggested expert disclosure deadlines.

The parties suggest a deadline for disclosure of Plaintiffs' experts, including service of experts' written reports pursuant to Fed.R.Civ.P. 26(a)(2), on February 17, 2012; disclosure of Defendants' experts, including service of experts' written reports pursuant to Fed.R.Civ.P. 26(a)(2), on April 20, 2012; and disclosure of all parties' rebuttal experts and rebuttal opinions, including service of experts' written reports pursuant to Fed.R.Civ.P. 26(a)(2), on June 8, 2012.

g. Suggested discovery cut-off.

Discovery should be completed by-September 14, 2012.

L. Anticipated Motions and Suggested Dispositive Motion Filing Deadline:

Persels Defendants will file a motion regarding issues raised by the attorney-client privilege and work product protection of putative class members

1 by August 16, 2011, with Plaintiffs' responsive brief due September 9, 2012 and
 2 Defendants' reply brief due September 19, 2011.
 3

4 Plaintiffs anticipate filing a motion for class certification. The parties agree
 5 that Plaintiffs' motion will be due January 13, 2012, with Defendants' responsive
 6 brief due February 17, 2012 and Plaintiffs' reply brief due March 2, 2012.
 7

8 In addition, it is anticipated that Plaintiffs and/or Defendants may file
 9 motions for summary judgment and/or partial summary judgment as to some or all
 10 of Plaintiffs' claims. The parties suggest a deadline for the hearing on any
 11 dispositive motion of November 9, 2012, with the briefing schedule for any such
 12 motion to follow the Local Rules.
 13

14 **M. Trial:**
 15

16 **a. Suggested Trial Date(s).**

17 The parties suggest a trial date of January 22, 2013.
 18

19 **b. Length of Trial.**
 20

21 Plaintiffs anticipate that the entire case can be tried in two to four weeks.
 22

23 Defendants anticipate that for Plaintiffs Bronzich and Farris in a non-class-
 24 action case, the trial likely will last 6 – 12 court days. If a class action were
 25 certified, depending on the size of the class, the liability phase of the trial could
 26 last as long 2 – 4 weeks. A damages phase likely would last several months in

1 light of the individual issues requiring adjudication on a claimant-by-claimant
 2 basis, including individual damages. *See Wal-Mart Stores, Inc. v. Dukes*, No.
 3 10-277, ___ U.S. ___ (June 20, 2011).

5 Plaintiffs anticipate damages may be adjudicated in a timely and efficient
 6 manner on a class-wide basis over the course of a couple days, and that there are
 7 no individual issues.

9 **c. Bifurcation.**

10 Plaintiffs believe bifurcation of issues is unnecessary, inefficient and
 11 inappropriate.

13 Defendants believe, depending on the outcome of pre-trial matters,
 14 bifurcation might be appropriate on liability and damages, including the potential
 15 for bellwether plaintiff trials on damages.

17 **d. The Need for Special Audio/Visual Courtroom Technology.**

19 The parties do not presently anticipate needing any special technology,
 20 though they anticipate that they will utilize courtroom electronic technology and
 21 will coordinate with the Court prior to trial.

22 **N. The Likelihood for Settling or Resolving the Case and the Point at
 23 Which the Parties can Conduct Meaningful Dispute Resolution.**

25 The parties are discussing scheduling early mediation in September or

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 JOINT STATUS CERTIFICATE AND
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THE SCOTT LAW GROUP
 A PROFESSIONAL SERVICE CORPORATION
 926 W. SPRAGUE AVENUE
 SUITE 680
 SPOKANE, WA 99201
 (509) 455-3966

1 October 2011.

2 **O. Any Other Matters that may be Conducive to the Just, Efficient, and**
3 **Economical Determination of the Action.**

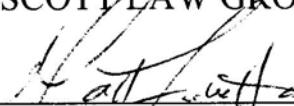
4 None are anticipated at this time.

5

6 DATED this 26th day of July, 2011.

7

8 THE SCOTT LAW GROUP, P.S.

9 By: 
10 Darrell W. Scott, WSBA #20241
11 darrellscott@mac.com
12 Matthew J. Zuchetto, WSBA #33404
13 matthewzuchetto@mac.com

14 -and-

15 TERRELL MARSHALL & DAUDT PLLC
16 Beth E. Terrell, WSBA #26759,
17 bterrell@tmdwlaw.com
18 Toby J. Marshall, WSBA #32726,
19 tmarshall@tmdwlaw.com
20 Jennifer Rust Murray, WSBA #36983,
21 jmurray@tmdwlaw.com
22

23 *Attorneys for Plaintiffs*

24 STOEL RIVES LLP

25 26
26 /s/Christopher N. Weiss
Christopher N. Weiss, WSBA 14826
Leonard J. Feldman, WSBA 20961
600 University Street
Suite 3600
Seattle, Washington 98101
206-624-0900

JOINT STATUS CERTIFICATE AND
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LAW OFFICES
THE SCOTT LAW GROUP
A PROFESSIONAL SERVICE CORPORATION
926 W SPRAGUE AVENUE
SUITE 680
SPOKANE, WA 99201
(509) 455-3966

1 cnweiss@stoel.com
2 Ljfledman@stoel.com
3

4
5 *Attorneys for Defendants Persels & Associates,*
6 *LLC,*
7 *Neil Ruther and Jimmy Persels*

8
9
10 WINSTON & CASHATT, LAWYERS, a
11 Professional Service Corporation

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16
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19
20
21
22
23
24
25
26 *s/C. Matthew Andersen, WSBA No. 6868*
601 W. Riverside, Ste. 1900
Spokane, WA 99201
(509) 838-6131
Facsimile: (509) 838-1416
E-mail Address: cma@winstoncashatt.com

Lawrence S. Greenwald, *Pro Hac Vice*
Brian L. Moffet, *Pro Hac Vice*
Catherine A. Bledsoe, *Pro Hac Pending*
GORDON, FEINBLATT, ROTHMAN,
HOFFBERGER & HOLLANDER, LLC
233 East Redwood Street
Baltimore, Maryland 21202
Telephone: (410) 576 – 4291
E-mail Address: lgreenwald@gfrlaw.com
E-mail Address: bmoffet@gfrlaw.com
E-mail Address: cbledsoe@gfrlaw.com

Attorneys for Answering Defendants
Ascend One Corporation, CareOne
Services, Inc., and Amerix Corporation

JOINT STATUS CERTIFICATE AND
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LAW OFFICES
THE SCOTT LAW GROUP
A PROFESSIONAL SERVICE CORPORATION
926 W. SPRAGUE AVENUE
SUITE 680
SPOKANE, WA 99201
(509) 455-3966